IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.337 OF 2007
WITH
CIVIL APPLICATION NO.678 OF 2007

Jagannath Malhari Jadhav and Ors ..Appellants.
Vs.
Nivrutti Waman Jadhav & Ors. ..Respondents.

Mr.Tushar Sonawane, adv. for the Appellants.
Mr.Rahul D. Motkari, adv. for the Respondent No.1.

CORAM : J.H.BHATIA, J.
DATE : SEPTEMBER 19, 2007.

P.C.:

1. After some discussion at the bar, the learned counsel for both the parties agrees that the judgments of both the Courts below may be set aside and the Regular Civil Suit No.908 of 2000 may be remanded back to the trial Court so that the land may be measured again to find out whether there is any encroachment or not. The learned counsel for the appellant also agrees that the cost of the measurement may be initially borne by the defendant/appellant.

2. Therefore, with consent of the learned counsel for both the parties, the appeal is allowed in following terms:

(a). The judgement and decree in regular civil suit

no.908 of 2000 passed by 2nd Joint Civil Judge, Junior Division, Nashik as well as Regular Civil Appeal No.88 of 2003 passed by Ad-hoc District Judge-3, Nashik are hereby set aside and the Regular Civil Suit No.908 of 2000 is hereby remanded back to the 2nd Joint Civil Judge, Nashik for hearing and disposal of the same afresh. The learned trial Court shall appoint District Inspector Land Records or some cadastral surveyor as a commissioner to take measurement of the suit land as well as adjoining lands of the defendants after giving notice to all the concerned parties and to submit a report. After the report is received, unless it is admitted by both the parties, the plaintiff may call the said commissioner as a witness. The defendants/appellants shall initially bear the cost of the commissioner but eventually it will be cost of the suit. The appeal is allowed in terms of the above directions.

3. As the Second Appeal No.337 of 2007 is disposed off, civil application does not survive and stands disposed off accordingly.

[J.H.BHATIA, J.]